

**UNAPPROVED MINUTES
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 1, 2007
Room 311, State Capitol
Santa Fe**

The third meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative Gail Chasey and Senator Mary Jane M. Garcia, co-chairs, at 10:10 a.m. in Room 311 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Mary Jane M. Garcia, Co-Chair
Rep. Danice Picraux
Rep. Gloria C. Vaughn

Absent

Sen. John T.L. Grubestic
Sen. John C. Ryan

Advisory Members

Rep. Ray Begaye
Sen. Joseph J. Carraro
Sen. Linda M. Lopez
Rep. Teresa A. Zanetti

Sen. Rod Adair
Sen. Dede Feldman
Sen. James G. Taylor

Staff

Roxanne Knight, Legislative Council Service (LCS)
Jacob Winowich, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, October 1

The meeting was called to order at 10:10 a.m. Representative Chasey and Senator Garcia welcomed committee members and guests. Committee members introduced themselves to the audience.

Tobacco Use Prevention and Control (TUPAC) Program Update

Benny Shendo, Jr., secretary, Indian Affairs Department (IAD), introduced himself and two members of his staff, Brenna Clani and Lillian Brooks.

Secretary Shendo reviewed the handout provided to the committee. IAD has received two appropriations from the Tobacco Settlement Program Fund: one in July 2006 in the amount of \$500,000, and the other in July 2007 in the amount of \$500,000. IAD partnered with the New Mexico Department of Health (DOH) TUPAC Program and the New Mexico Tribal Tobacco Coalition to develop programs that build tribal capacity. This tribal-state effort identified a need to develop culturally appropriate tobacco cessation and prevention initiatives that recognize the distinct ceremonial uses among New Mexico's Native American communities, as opposed to commercial use.

Building tribal TUPAC Program capacity that is culturally appropriate addresses tobacco cessation and prevention and promotes healthier families and communities. IAD divided each year's appropriation into three categories: (1) mini-grants for TUPAC programs; (2) money awarded through a competitive request for proposals (RFP) process for capacity and infrastructure building and for the development of tobacco cessation curriculum; and (3) the sponsorship of a youth planning conference.

Although the mini-grants, ranging from \$10,000 to \$20,000, were available to all 22 tribes, only 10 tribes and pueblos received awards. Small tribes received \$10,000; medium sized tribes received \$15,000; and larger tribes received \$20,000. The Pueblo of Santa Ana is the only one that did not spend its grant of \$10,000.

In the second category, funds were awarded after a statewide call was made for applications through an RFP process. The evaluation committee awarded five contracts:

- \$58,595 to Albuquerque Indian Center, Inc.;
- \$58,000 to the Pueblo of Jemez;
- \$52,815 to the Pueblo of Laguna;
- \$78,000 to Oso Vista Ranch; and
- \$90,500 to Tohatchi Fighting Back, Inc.

Finally, money was set aside for the Tobacco Cessation and Prevention Youth Planning Seminar, co-sponsored with DOH and IAD. In conjunction with the conference, money was used to add a tobacco cessation and use prevention component to the IAD web site.

Secretary Shendo explained that not being able to award multiyear contracts during the first year of the program made it difficult to attract bidders. He looks forward to issuing multiyear contracts so that the rebidding process can be avoided, particularly because of the time required to go through the RFP process.

There was considerable discussion about the contracting process and the need for IAD to have additional staffing. Representative Begaye expressed concern about notification to the tribes about the mini-grants. Secretary Shendo indicated that he sent letters about the mini-grants to all the tribal leaders. He noted that some funds received by the tribes were flowing back to the DOH and the TUPAC programs offered by the DOH. Representative Chasey noted that a

number of school districts do not apply for funding. Representative Begaye noted his preference that funds go into programs with benchmarks for success rather than conferences. Secretary Shendo indicated that he continues to support the leadership conference. Representative Begaye requested a report following the conference in 2007. Representative Begaye stated that he thinks there is a possibility for moving the \$500,000 back to the DOH; however, he ultimately decided that the IAD should continue with the appropriation. He is concerned that the Navajo Nation is not being included, but Secretary Shendo reaffirmed that he has notified the tribes about the IAD program. Secretary Shendo stated that the funding was needed in the Native American communities and should continue.

In response to Representative Picraux's questions concerning multiyear contracts, DOH representative Larry Elmore stated that the DOH issues multiyear (e.g., four-year) contracts contingent upon appropriations. Representative Zanetti advised that more data are needed on the success of these programs. She expressed concern about rural communities being left out or missing out on the funding because of a lack of understanding of the RFP process. She asked if there is someone at the state level who could offer assistance to them. Representative Chasey asked the DOH representatives if they could assist IAD, and they agreed to join forces to assist wherever needed.

Senator Carraro suggested that the committee may want to look at requiring a local match for the funds, particularly so that there could be a balancing of responsibility between the state and tribal communities. Secretary Shendo stated that many of the mini-grants are complementing programs in the communities. Senator Carraro referenced some research materials on the tax agreements that are shared among other states and tribes with regard to cigarette and other taxes. The senator expressed concern over competing interests with the tribes selling discounted cigarettes, while simultaneously requesting TUPAC funding dollars. He acknowledged that there is a sovereignty issue, and wondered aloud if this issue should receive additional committee attention. Representative Chasey responded that with the elevation of the IAD to cabinet status, perhaps the time has come to look at the types of tax agreements that might be of interest to the committee. Senator Carraro expressed concern over the estimated decrease in tobacco settlement funds, and he suggested that the time for discussing tax agreements with the tribes may be now. Representative Chasey noted that in a joint 2002 interim meeting with this committee and the Indian Affairs Committee, the tribal leaders requested government-to-government talks rather than a legislative solution. Representative Chasey suggested to Secretary Shendo that he assume leadership of this issue by initiating talks between the tribes and state government officials. She said the legislature would be glad to facilitate any discussions that the tribes would like to have with the executive branch. Representative Vaughn suggested that Secretary Shendo speak with Senator Pinto and that a joint Indian Affairs Committee meeting be considered in the future, after first trying the government-to-government talks.

Representative Chasey and Senator Garcia reiterated Representative Zanetti's concern that the TUPAC programs funded through the IAD need to maintain appropriate data and use

accepted methodologies for tracking program success so that the funding could be included with the DOH funding when ascertaining if New Mexico is meeting the levels of funding recommended by the Centers for Disease Control and Prevention (CDC). Representative Chasey indicated that she sees a need for discussion on the cigarette tax issues.

Approval of the August 2007 Minutes

The minutes of the August 27, 2007 meeting were adopted unanimously by the committee members after the committee adopted the amendment of Senator Carraro to include him as an attendee during the August meeting.

Introduction of Dr. Alfredo Vigil, Secretary, DOH

Dr. Vigil appeared before the committee, and complimented Secretary Shendo for his initiatives with the "small grants" offered for tobacco programs through the IAD. Dr. Vigil expressed his support for these types of grants that encourage small agencies and groups to work together for purposes of applying for and receiving grants. He credited the committee members with doing great work, particularly in the areas of prevention and breast cancer treatment. He called for universal health care to end the degree of human suffering experienced by those without health insurance and health care.

Senator Garcia thanked Dr. Vigil and Representative Begaye said that New Mexico is far ahead of Montana in its prevention initiatives.

Proposed Legislation

Pam Ray, a staff attorney with the LCS, reviewed draft legislation requested by the committee members during its second meeting. Accompanying Ms. Ray were paralegal Claudia Ravanelli and Assistant Attorney General Francise Chavez. Ms. Chavez explained that the draft legislation had been discussed among staff at the Taxation and Revenue Department, along with the attorney general's staff.

The proposed legislation amends the Cigarette Tax Act to clarify definitions relating to cigarette taxation and the Master Settlement Agreement, requiring that stamped packages of cigarettes be manufactured by entities listed on the attorney general's directory of tobacco product manufacturers and brand families; it includes a definition of the "directory" and "tobacco product manufacturer". The primary reason for the changes is to comply with the provisions of the Master Settlement Agreement and to assist with enforcement of unstamped tobacco products. The changes will expedite the seizure of unstamped products. The changes apply to nontribal cigarettes. Also, the changes are consistent with the language contained in the Tobacco Escrow Fund Act.

Senator Carraro suggested that the legislation be forwarded to the Courts, Corrections and Justice Committee to review the penalty provisions. Ms. Ravanelli pointed out that the legislation closes a loophole in the law and that the penalty is the seizure of the product and taking of the license of the distributor. Representative Begaye asked that tribes that have smoke

shops be invited if the bill goes to the Courts, Corrections and Justice Committee. Ms. Ravanelli noted that the position of the attorney general is that the unstamped cigarettes are contraband under current law, but that the seizure authority is absent in the law. Representative Chasey noted that the legislation will shift the burden of compliance to the distributor.

Ms. Ray asked that the committee approve technical adjustments to the legislation. The bill was unanimously adopted on the motion of Senator Garcia, which was seconded by Representative Vaughn.

TUPAC Program Evaluation and RFP Process Report

David Vigil, bureau chief, Chronic Disease Prevention and Control, DOH, and Larry Elmore, program manager, TUPAC Program, gave a presentation on the program. Data reflecting tobacco use in New Mexico from 2000-2006 indicate the following:

- a decline of 15.5% fewer smokers in New Mexico in 2006 compared to 2001;
- 11,100 adults were saved from dying prematurely from smoking;
- during the first year of TUPAC, there were 1,036 fewer smoking-affected births, and over five years, it grew to 5,143 fewer smoking-affected births;
- savings from fewer smoking-affected births are \$1.11 million the first year and \$5.92 million over five years;
- savings from fewer heart attacks and strokes was \$1.48 million the first year, increasing to \$20.0 million over five years;
- annual savings from fewer smoking-caused heart attacks and strokes grows substantially each year as more health problems are prevented by the initial smoking decline;
- savings resulting from the prevention of smoking-caused cancer are even larger, but do not begin to accrue until years after the initial smoking decline;
- 40% of smoking-caused health care expenditures in New Mexico are paid by the Medicaid program;
- over their lifetimes, the 50,690 adults who have quit smoking between 2001 and 2006 will have saved New Mexico \$167.2 million in future Medicaid expenditures;
- the total reduction to future health costs based on the 15.5% decline in adult smoking in New Mexico is projected to be \$418.1 million; and
- the overall trend in youth tobacco use (grades nine through 12) from 2001 to 2005 has now been stabilized. Statewide smoking by adolescents was reduced from 30.2% in 2003 to 25.7% in 2005. Previously, smoking among the state's youth had been increasing. There was a statistically significant decline in high school smoking from 2003 to 2005 in four counties: Grant, Mora, Otero and Quay. The most significant decline occurred in Mora County, where youth smoking dropped by 19% (48.7% to 29.8%).

There are four key elements for reducing youth tobacco use: clean indoor air laws; increases in the price of tobacco products; statewide media campaigns; and increases in the

effectiveness of prevention activities. Senator Carraro noted that every dollar spent on tobacco cessation and prevention yields monetary benefits many times over.

Focusing efforts at the middle school level was recommended by the DOH staff. They encouraged continued partnerships with other state agencies such as the IAD, and with other state programs, including diabetes prevention programs. Other highlights noted were 4,596 registered callers for the quit line and servicing callers with the nicotine replacement therapies (e.g., gum, patches). TUPAC has new initiatives focusing on spit tobacco prevention; training for contractors; development of youth media campaigns and pre- and post-testing for the curriculum used. Representative Zanetti expressed concern that high-risk groups may not be including children with a lot of disposable income. Mr. Elmore suggested that the mass media campaigns will reach all children. He noted that the provisions of the Clean Indoor Air Act will result in more people contacting the quit line.

The presenters noted that the RFP process was initiated and posted on September 30, 2007, which will result in the awarding of multiyear (four-year) contracts for TUPAC programming. They noted that there is plenty of capacity for providing additional cessation and prevention programming if additional appropriations are made to the DOH. Mr. Elmore noted that the DOH has expanded contracts to provide more nicotine therapy. Representative Picraux wondered if specific groups are targeted for the programs. Mr. Vigil reported that the DOH focuses on different high-risk groups, particularly some of those not covered by any insurance program for tobacco prevention. Representative Picraux expressed her concern that the DOH should place some focus on working with role models (e.g., teachers and others) who are in regular contact with youth. Representative Vaughn asked if certain hospitals do screenings for smokers, to which Mr. Vigil responded that UNM hospitals screen all patients for tobacco use.

In response to questions about the health impacts of smoking, Mr. Elmore pointed out that smoking releases carbon monoxide, which goes into the blood stream and can have a particularly negative impact on the cardiovascular system.

There was additional discussion about the impact of raising cigarette taxes, in particular because the number of packs of cigarettes sold per New Mexico resident had its most dramatic decrease after the \$.70 tax increase in 2003.

Diabetes Program Evaluation and RFP Process Report

Judith Gabriele, diabetes program manager for the DOH, began her presentation by stating that 143,760 New Mexicans (one in 10 adults) have diabetes. She noted that the risk factors for diabetes are obesity, lack of physical activity, age, family history, ethnicity and having a baby that weighs over nine pounds. The cost of diabetes in New Mexico in 2006 is estimated at nearly \$2 billion.

Funding provided through tobacco settlement dollars has purchased:

- physical activity and nutrition programs for almost 90,000 elementary school students;
- community-based disease management programs for more than 7,000 people with diabetes;
- meters and strips to 27 federally qualified primary care centers to be distributed to uninsured and underinsured patients and public health offices for blood glucose testing for high-risk patients that have reached more than 8,000 people;
- training and professional development for more than 500 providers;
- technical assistance, educational supplies and diabetes patient monitoring equipment for clinics that serve uninsured and underinsured people;
- public and patient education materials and learning tools for people with diabetes;
- social marketing campaigns for *Walk Doña Ana* and *Active and Alive*, community-based physical activity programs; and
- a nurse for diabetes and prevention control, two health educators, and a .5 FTE clerk.

Ms. Gabriele reviewed all the programs funded from tobacco settlement funds and offered a graphic presentation of the outcomes achieved.

A significant priority for the fiscal year 2007 program was to encourage people with diabetes to use the quit line and receive free nicotine replacement therapy (NRT). Three hundred forty-one people with diabetes registered with the Quit Line and 176 received NRT; the majority requested the patch. Ten community health workers received training about motivational interviewing for smoking cessation. Information and resources about diabetes prevention and the quit line were distributed to primary care providers and the Diabetes Advisory Council.

HIV/AIDS Program Evaluation and RFP Process Report

Daryl Smith, bureau chief of the DOH Infectious Disease Bureau, reviewed the HIV/AIDS program. As of July 31, 2007, there were 3,312 persons on record living with HIV/AIDS in New Mexico. Of those, 2,188 were diagnosed in-state. In FY07, there were 150 newly diagnosed cases of HIV/AIDS in New Mexico and 28 deaths related to HIV/AIDS. The program receives total funding of \$470,000 distributed as follows: the HIV services program receives \$310,000 and the harm reduction program receives \$160,000. The HIV services are allocated as follows and the services are delivered through the Health Management Alliance (HMA) provider agreements:

- Alianza of New Mexico (Roswell) — \$65,000;
- Camino de Vida (Las Cruces) — \$65,000;
- New Mexico AIDS Services (Albuquerque/Farmington) — \$65,000;
- Southwest CARE Center (Santa Fe) — \$65,000; and
- the University of New Mexico Hospital Truman Street Clinic — \$50,000.

In FY07, 1,837 persons with HIV/AIDS received these services. In FY06, 1,712 received services. In FY05, 1,635 received services. This results in a 7.4% overall increase. A 96% satisfaction rate was reported for the FY07 services delivered through HMAs.

The Harm Reduction Program gets \$160,000 allocated as follows:

- Just Healthcare — provides primary medical care to intravenous drug users: \$40,000;
- New Mexico AIDS Services — Farmington expansion: \$14,000;
- Dominick Zurlo – contracted trainer: \$16,000;
- Alianza of New Mexico (Roswell): \$30,000; and
- Santa Fe's Health Care for the Homeless — expansion of harm reduction services in Santa Fe County: \$60,000.

Through the Harm Reduction Program, there are 54 sites statewide for syringe exchanges. Since 1998, more than 16,000 individuals have enrolled in the DOH-sponsored syringe exchange programs statewide. Since 2001, there have been more than 350 "saves" (cases in which people have been resuscitated) using naloxone and rescue breathing.

Representative Begaye inquired about the syringe distribution process, to which Mr. Smith noted that syringes are free, but the exchange is highly controlled by the program. There are 44 DOH public health office sites statewide that participate in the program.

Biomoda, Inc., Update on Its Research

John Cousins, president of Biomoda, Inc., reviewed the role of Biomoda in its study of veterans to detect early lung cancer. The Biomoda study involves using a noninvasive sputum test, the results of which could determine if larger scale testing should be done. Biomoda is hoping to receive a contract from the Veterans' Services Department, which received a \$350,000 appropriation for this type of study. Biomoda has a clinical team assembled that screens 100 veterans in four groups: those who have never smoked, those at risk who are smokers or have had battlefield exposures, lung cancer patients and lung cancer survivors. He reviewed the multistep testing process.

If the contract award and study can begin in November, the final study report would be due on July 1, 2008. This would be the first year of the study. The Biomoda test is a much earlier detection mechanism than others available, and the results of the study could lead to further study and, ultimately, a better approach to early detection of lung cancer.

Committee members reviewed the funding recommendation that was previously made, although it was not funded at the requested level of \$1.3 million. Some members expressed concern that there not be a duplication of effort between the work of Biomoda, UNM and the Lovelace Respiratory Research Institute (LRRI). Mr. Cousins testified that he had met with Dr. Rubin from LRRI and that Dr. Rubin sees his work as competitive with Biomoda, although it is different because LRRI is looking for a "genetic predisposition" for cancer as compared to the early detection of cancer being studied by Biomoda.

Public Comment

During the comment period, representatives from the American Cancer Society and New Mexicans Concerned About Tobacco offered letters of recommendation for funding TUPAC at

\$11 million; funding \$200,000 for breast and cervical cancer screening and diagnostic services (DOH); funding \$5,015,000 for breast and cervical cancer treatment through the Human Services Department; and funding no less than \$500,000 for tobacco control programs through the IAD.

Funding Recommendations

Representative Begaye initially requested that \$200,000 be set aside for a task force to study tobacco tax issues with the tribes. He later withdrew his request after considerable discussion with committee members about pooling resources from other funds to address his request.

Senator Carraro had to leave the meeting, but he asked the members to consider funding \$100,000 to \$300,000 for Project Echo, a telemedicine and distance-learning program linking health care providers from rural clinics, the Indian Health Service and prisons with specialists at UNM.

After committee members and staff discussed revenue decreases for future tobacco settlement program funds, the members reviewed each funded item from previous years and compiled its recommendations. There was no objection to the final recommendations and they received unanimous support from the committee. Staff were directed to include recommendations that any cash balances and revenues available in excess of the \$21,000,000 recommendation should be awarded to the DOH TUPAC programs to achieve a higher state ranking in achieving CDC compliance with the recommended minimum of \$13.7 million for tobacco use prevention and cessation. The committee also endorsed supporting the requests of the attorney general for sufficient enforcement funding in his budget to remain compliant with the Master Settlement Agreement.

The committee adjourned at approximately 3:30 p.m.